APPENDIX Y

NEW YOR[illegible] CONSOLIDATED LAW SERVICE

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CHAPTER 48 OF THE CONSOLIDATED LAWS

ARTICLE 4. PROVISIONS RELATING TO GAS AND ELECTRICAL CORPORATIONS; REGULATION OF PRICE OF GAS AND ELECTRICITY

NY Pub. Ser. § 65

§ 65. Safe and adequate service; just and reasonable charges; unjust discrimination; unreasonable preference; protection of privacy

1. Every gas corporation, every electric corporation and every municipality shall furnish and provide such service, instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable. All charges made or demanded by any such gas corporation, electric corporation or municipality for gas, electricity or any service rendered or to be rendered, shall be just and reasonable and not more than allowed by law or by order of the commission. Every unjust or unreasonable charge made or demanded for gas, electricity or any such service, or in connection therewith, or in excess of that allowed by law or by the order of the commission is prohibited.

2. No gas corporation, electric corporation or municipality shall directly or indirectly, by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for gas or electricity or for any service rendered or to be rendered or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions.

3. No gas corporation, electric corporation or municipality shall make or grant any undue or unreasonable preference or advantage to any person, corporation or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

4. Nothing in this chapter shall be taken to prohibit a gas corporation or electric corporation from establishing a sliding scale for a fixed period for the automatic adjustment or charges for gas, electricity or any service rendered or to be rendered and the dividends to be paid to stockholders of such gas corporation or electric corporation, provided that the sliding scale shall first have been filed with and approved by the commission; but nothing in this subdivision shall operate to prevent the commission after the expiration of such fixed period from fixing proper, just and reasonable rates and charges to be made for service as authorized in this article.

5. Nothing in this chapter shall be taken to prohibit a gas corporation or electrical corporation from establishing classifications of service based upon the quantity used, the time when used, the purpose for which used, the duration of use or upon any other reasonable consideration, and providing schedules of just and reasonable graduated rates applicable thereto. No such classification, schedule, rate or charge shall be lawful unless it shall be filed with and approved by the commission, and every such classification, rate or charge shall be subject to change, alteration and modification by the commission.

6. Service charges prohibited. Every gas corporation shall charge for gas supplied a fair and reasonable price. No such corporation shall make or impose an additional charge or fee for service or for the installation of apparatus or the use of apparatus installed, except that a charge may be made:

(a) where entry, inspection or examination as authorized by subdivision nine of this section is denied;

(b) for reconnecting the service to a person or corporation if the service to such person or corporation was disconnected, in accordance with applicable legal requirements, for non-payment of bills for service; or

(b-1) for expenses reasonably incurred as determined by the commission in cases of meter tampering and theft of service. Such expenses shall include, but not be limited to, the cost of investigating, repairing and replacing meters and pipes, and the cost of moving a meter and installing it in a secure location.

(c) for a remote meter reading device upon the request and consent of the customer.

7. No gas corporation or electric corporation shall sell or offer for sale any list of names of its customers.

8. Inspection of transmission pipelines conveying natural gas. Every gas corporation transmitting natural gas under permits or franchises permitting the laying or maintaining of pipelines conveying natural gas shall conduct a leak detection inspection using leak detection equipment or employing a visual inspection of such transmission pipelines annually or more frequently when ordered by the commission. A written report of every such inspection shall be made available to the commission.

9. Buildings may be entered for the examination of meters, pipes, fittings, wires and works.

(a) Any officer or agent of any gas corporation, electric corporation or municipality for that purpose duly appointed and authorized by the corporation, upon exhibiting a photo-identification badge and a written authority signed by the president or vice-president and secretary or assistant secretary of the corporation, or by the mayor or clerk of a municipal

corporation or by the chairman and secretary of a municipal board in control of a public utility, may enter, at all reasonable times, any store, building, room or place supplied with gas, electricity or water by such utility corporation or municipality for the purpose of inspecting and examining the meters, pipes, fittings, wires and works for supplying or regulating the supply of gas or electricity and of ascertaining the quantity of gas or electricity supplied.

(b) If any person, at any time, directly or indirectly, shall prevent or hinder any such officer or agent from so entering any such premises, or from making any such inspection or examination at any reasonable time, he or she shall forfeit to the corporation or municipality one hundred dollars for every such offense.

10.(a) Notwithstanding any other provision of law, in any case where electric corporations are permitted incremental seasonal differentials in rates or charges, such differentials shall not be imposed in any month upon any residential customer for the first two hundred fifty kilowatt hours used by such customer in such month; provided, however, that the commission may promulgate rules to permit the imposition of such seasonal differentials where a customer requests a special rate that may include a seasonal differential or where service is to be provided to a residential customer for a temporary period not to exceed six months.

(b) In any case where an electric corporation is permitted incremental seasonal differentials in rates or charges, such corporation shall, on or before such differential rates commence, inform any customer subject to such differential as to the commencement and termination dates of such differential rates and permit such customer to read his own meter on such dates and forward the readings thereon to the corporation.

11. Civil actions.

(a) Every gas corporation, electric corporation or municipality furnishing utility service may initiate a civil action to collect a civil penalty against a user of non-residential service in accordance with this subdivision. Upon a showing in such action that a user of non-residential service has knowingly accepted or received the use and benefit of gas or electric service which has been prevented from being properly registered by a meter provided therefor, the utility may be granted a civil penalty, in addition to the value of the unpaid service, in an amount which the court in its discretion shall deem to be just and reasonable, which in no event shall be more than three times the retail value of the gas or electric service accepted or received. In any action under this subdivision, proof that a meter has been intentionally prevented from properly registering gas or electric service shall be prima facie proof that the user of non-residential service who accepts or receives the use and benefit of such service has done so with knowledge of the condition so existing, if the gas corporation, electric corporation or municipality shall first present evidence that such person took possession of the benefitted premises and used the gas or electric service prior to the creation of the condition.

(b) For the purposes of this subdivision, a user of non-residential service shall be a person benefitting from such service who is in possession of the premises to which the service is delivered.

(c) Any civil penalty recovered pursuant to this section in excess of the actual damages sustained by the utility shall be taken into account by the public service commission in establishing future utility rates.

11. An electric corporation shall send annually to each residence it serves a form that may be used to notify the corporation that a person living in the residence uses a life

support system. For the purposes of this subdivision, life support systems shall include, but not be limited to, hemodialysis equipment, respirators and apnea monitors. An electric corporation shall maintain a current list of customers who use such life support systems and include the list in such electric corporation's system emergency plans.

APPENDIX Z

NEW YORK CONSOLIDATED LAW SERVICE

PUBLIC SERVICE LAW

CHAPTER 48 OF THE CONSOLIDATED LAWS

ARTICLE 4. PROVISIONS RELATING TO GAS AND ELECTRICAL CORPORATIONS; REGULATION OF PRICE OF GAS AND ELECTRICITY

NY Pub. Ser. § 66

§ 66. General powers of commission in respect to gas and electricity

The commission shall:

1. Have general supervision of all gas corporations and electric corporations having authority under any general or special law or under any charter or franchise to lay down, erect or maintain wires, pipes, conduits, ducts or other fixtures in, over or under the streets, highways and public places of any municipality for the purpose of furnishing or distributing gas or of furnishing or transmitting electricity for light, heat or power, or maintaining underground conduits or ducts for electrical conductors, and all gas plants and electric plants owned, leased or operated by any gas corporation or electric corporation.

2. Investigate and ascertain, from time to time, the quality of gas supplied by persons, corporations and municipalities; examine or investigate the methods employed by such persons, corporations and municipalities in manufacturing, distributing and supplying gas or electricity for light, heat or power and in transmitting the same, and have power to order such reasonable improvements as will best promote the public interest, preserve the public health and protect those using such gas or electricity and those employed in the manufacture and distribution thereof, and have power to order

reasonable improvements and extensions of the works, wires, poles, lines, conduits, ducts and other reasonable devices, apparatus and property of gas corporations, electric corporations and municipalities; and have power after an investigation and a hearing to order any corporation having authority under any general or special law or under any charter or franchise, to lay down, erect or maintain wires, pipes, conduits, ducts or other fixtures in, over or under the streets, highways and public places of any municipality for the purpose of supplying, selling or distributing natural gas, to augment its supply of natural gas, whenever the commission deems necessary and whenever artificial gas can be reasonably obtained, by acquiring by purchase, manufacture or otherwise a supply thereof to be mixed with such natural gas, in order to render adequate service to the customers of such corporation or to maintain a proper and uniform pressure; and have power after an investigation and a hearing to order any corporation having authority under any general or special law or under any charter or franchise, to lay down, erect or maintain wires, pipes, conduits, ducts or other fixtures in, over or under the streets, highways and public places of any municipality for the purpose of supplying, selling or distributing artificial gas, to augment its supply of artificial gas, whenever the commission deems necessary and whenever natural gas can be reasonably obtained, by acquiring by purchase or otherwise a supply thereof to be mixed with such artificial gas, in order to render adequate service to the customers of such corporation or to maintain a proper and uniform pressure; and to fix such rate for the supplying of mixed gas as shall secure to such corporation a fair return; and may order the curtailment or discontinuance of the use of natural gas for manufacturing or industrial purposes, for periods aggregating not to exceed four months in any calendar year, if it is established to the satisfaction of the commission that the supply of natural gas is not adequate to meet the reasonable demands of domestic consumption and

may prohibit the use of natural gas in wasteful devices and practices.

2-a. Have power, after an investigation and hearing held on notice and upon a finding that as a result of a shortage of gas a public emergency exists, to determine whether any gas corporation has available, or may be made available by the operation of its facilities, gas in excess of an amount necessary to supply its consumers for purposes for which gas may properly be used during such emergency. Upon the making of such a determination it shall have power to order such a gas corporation to transfer and make available to any other gas corporation where a shortage of gas exists, for the duration of the emergency, any or all of such excess gas for which the transferring company shall receive just compensation. Such order may require the installation and operation of all necessary connections and facilities at the expense of the purchasing gas corporation and require the selling and purchasing gas corporation to adopt appropriate regulations and practices to carry out the transfer of gas as ordered.

3. Have power by order to fix and change from time to time standards of the purity, illuminating power and heating power, and standards for the measurement thereof, of gas to be manufactured, distributed or sold by persons, corporations or municipalities for lighting, heating or power purposes, notwithstanding that other standards of the purity, illuminating power and heating power of gas and standards for the measurement thereof, may have been fixed by general or special statute and to prescribe from time to time the efficiency of the electric supply system, of the current supplied and of the lamps furnished by the persons, corporations or municipalities generating and selling electric current, and by order to require the gas so manufactured, distributed or sold to equal the standards so fixed by it, and to prescribe from time to time the reasonable minimum and maximum pressure at which gas shall be delivered by said persons,

corporations or municipalities. For the purpose of determining whether the gas manufactured, distributed or sold by such persons, corporations or municipalities for lighting, heating or power purposes conforms to the standards of illuminating power, heating power, purity and pressure, and for the purpose of determining whether the efficiency of the electric supply system, of the current supplied and of the lamps furnished conforms to the orders issued by the commission, the commission shall have power of its own motion, to examine and investigate the plants and methods employed in manufacturing, delivering and supplying gas or electricity, and shall have access through its members or persons employed and authorized by it to make such examinations and investigations to all parts of the manufacturing plants owned, used or operated by the manufacture, transmission or distribution of gas or electricity by any such person, corporation or municipality.

4. Have power, in its discretion, to prescribe uniform methods of keeping accounts, records and books, to be observed by gas corporations and electric corporations and by municipalities engaged in the manufacture, sale and distribution of gas and electricity for light, heat or power. It may also in its discretion prescribe, by order, forms of accounts, records and memoranda to be kept by such persons, corporations and municipalities. Notice of alterations by the commission in the required method or form of keeping a system of accounts shall be given to such persons or corporations by the commission at least six months before the same shall take effect. Any other and additional forms of accounts, records and memoranda kept by such corporations shall be subject to examination by the commission.

5. Examine all persons, corporations and municipalities under its supervision and keep informed as to the methods, practices, regulations and property employed by them in the transaction of their business. Whenever the commission shall

be of opinion, after a hearing had upon its own motion or upon complaint, that the rates, charges or classifications or the acts or regulations of any such person, corporation or municipality are unjust, unreasonable, unjustly discriminatory or unduly preferential or in anywise in violation of any provision of law, the commission shall determine and prescribe in the manner provided by and subject to the provisions of section seventy-two of this chapter the just and reasonable rates, charges and classifications thereafter to be in force for the service to be furnished notwithstanding that a higher or lower rate or charge has heretofore been prescribed by general or special statute, contract, grant, franchise condition, consent or other agreement, and the just and reasonable acts and regulations to be done and observed; and whenever the commission shall be of opinion, after a hearing had upon its own motion or upon complaint, that the property, equipment or appliances of any such person, corporation or municipality are unsafe, inefficient or inadequate, the commission shall determine and prescribe the safe, efficient and adequate property, equipment and appliances thereafter to be used, maintained and operated for the security and accommodation of the public and in compliance with the provisions of law and of their franchises and charters.

6. Require every person and corporation under its supervision and it shall be the duty of every such person and corporation to file with the commission an annual report, verified by the oath of the president, vice-president, treasurer, secretary, general manager, or receiver, if any, thereof, or by the person required to file the same. The verification shall be made by said official holding office at the time of the filing of said report, and if not made upon the knowledge of the person verifying the same shall set forth the sources of his information and the grounds of his belief as to any matters not stated to be verified upon his knowledge. The report shall show in detail (a) the amount of its authorized capital stock and the amount thereof issued and outstanding; (b) the

amount of its authorized bonded indebtedness and the amount of its bonds and other forms of evidence of indebtedness issued and outstanding; (c) its receipts and expenditures during the preceding year; (d) the amount paid as dividends upon its stock and as interest upon its bonds; (e) the names of its officers and the aggregate amount paid as salaries to them and the amount paid as wages to its employees; (f) the location of its plant or plants and system, with a full description of its property and franchises, stating in detail how each franchise stated to be owned was acquired; and (g) such other facts pertaining to the operation and maintenance of the plant and system, and the affairs of such person or corporation as may be required by the commission. Such reports shall be in the form, cover the period and be filed at the time prescribed by the commission. The commission may, from time to time, make changes and additions in such forms. When any such report is defective or believed to be erroneous, the commission shall notify the person, corporation or municipality making such report to amend the same within a time prescribed by the commission. Any such person or corporation or municipality which shall neglect to make any such report or which shall fail to correct any such report within the time prescribed by the commission shall be liable to a penalty of one hundred dollars and an additional penalty of one hundred dollars for each day after the prescribed time for which it shall neglect to file or correct the same, to be sued for in the name of the people of the state of New York. The amount recovered in any such action shall be paid into the state treasury and be credited to the general fund. The commission may extend the time prescribed for cause shown.

7. Require each municipality engaged in operating any works or systems for the manufacture and supplying of gas or electricity to make an annual report to the commission, verified by the oath of the general manager or superintendent thereof, showing in detail, (a) the amount of its authorized bonded indebtedness and the amount of its bonds and other

forms of evidence of indebtedness issued and outstanding for lighting purposes; (b) its receipts and expenditures during the preceding year; (c) the amount paid as interest upon its bonds and upon other forms of evidence of indebtedness; (d) the name of and the amount paid to each person receiving a yearly or monthly salary, and the amount paid as wages to employees; (e) the location of its plant and system with a full description of the property; and (f) such other facts pertaining to the operation and maintenance of the plant and system as may be required by the commission. Such report shall be in the form, cover the period and be filed at the time prescribed by the commission.

8. Have power, either through its members or inspectors or employees duly authorized by it, to enter in or upon and to inspect the property, buildings, plants, factories, power houses, ducts, conduits and offices of any of such corporations, persons or municipalities.

9. Have power to examine the accounts, books, contracts, records, documents and papers of any such corporation, person or municipality, and have power, after hearing, to prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited. At any such hearing the burden of proof shall be on the person, corporation or municipality to establish the correctness of the accounts in which such outlays and receipts have been entered, and the commission may suspend a charge or credit pending submission of proof by such person, corporation or municipality.

10. Have power to compel, by subpoena duces tecum, the production of any accounts, books, contracts, records, documents, memoranda and papers. In lieu of requiring production of originals by subpoena duces tecum the commission or any commissioner may require sworn copies of any such books, records, contracts, documents and papers, or parts thereof, to be filed with it. The commission may require of all such

corporations, persons or municipalities, specific answers to questions upon which the commission may need information, and may also require such corporations, persons or municipalities to file periodic reports in the form, covering the period and filed at the time prescribed by the commission. If such corporation, person or municipality shall fail to make specific answer to any question or shall fail to make a periodic report when required by the commission as herein provided within the time and in the form prescribed by the commission for the making and filing of any such report or answer, such corporation, person or the officer of the municipality shall forfeit to the state the sum of one hundred dollars for each and every day it shall continue to be in default with respect to such report or answer. Such forfeiture shall be recovered in an action brought by the commission in the name of the people of the state of New York. The amount recovered in any such action shall be paid into the state treasury and be credited to the general fund.

11. Have power in all parts of the state, either as a commission or through its members, or through an officer or employee specially authorized to conduct an investigation or hearing to subpoena witnesses, take testimony and administer oaths to witnesses in any proceeding or examination instituted before it, or conducted by it in reference to any matter within its jurisdiction under this article.

12.(a) Have power to require every gas corporation, electric corporation and municipality hereinafter in this subdivision called a utility to file with the commission and to print and keep open to public inspection schedules showing all rates and charges made, established or enforced or to be charged or enforced, all forms of contract or agreement and all rules and regulations relating to rates, charges or service used or to be used, and all general privileges and facilities granted or allowed by such utility; but this subdivision shall

not apply to state, municipal or federal contracts, except to the extent such contracts relate to transportation of electricity.

(b) No change shall be made in any rate or charge, or in any form of contract or agreement or any rule or regulation relating to any rate, charge or service, or in any general privilege or facility, which shall have been filed by a utility in compliance with an order of the commission, except after thirty days' notice to the commission and to each county, city, town and village served by such utility which had filed with such utility, within the prior twelve months, a request for such notice and which shall be affected by such change and publication of a notice to the public of such proposed change once in each week for four successive weeks in a newspaper having general circulation in each county containing territory affected by the proposed change, which notice shall plainly state the changes proposed and when the change will go into effect. The commission for good cause shown may, except in the case of major changes, allow changes to take effect prior to the end of such thirty-day period and without publication of notice to the public under such conditions as it may prescribe. The commission may delegate to the secretary of the commission its authority to approve a change to a schedule postponing the effective date of such schedule previously filed with the commission and to allow for good cause shown the postponement to take effect prior to the end of such thirty-day period and without publication of notice to the public.

(c) For the purpose of this subdivision, "major changes" shall mean an increase in the rates and charges which would increase the aggregate revenues of the applicant more than the greater of three hundred thousand dollars or two and one-half percent, but shall not include changes in rates, charges or rentals allowed to go into effect by the commission or made by the utility pursuant to an order of the commission after hearings held upon notice to the public.

(d) No utility shall charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges specified in its schedule filed and in effect; nor shall any utility refund or remit in any manner or by any device any portion of the rates or charges so specified, nor extend to any person any form of contract or agreement, or any rule or regulation, or any privilege or facility, except such as are regularly and uniformly extended to all persons under like circumstances.

(e) The commission shall have power to prescribe the form of every such schedule, and from time to time prescribe by order such changes in the form thereof as may be deemed wise. The commission shall also have power to establish such rules and regulations to carry into effect this subdivision as it may deem necessary, and to modify or amend such rules or regulations from time to time. Nothing in this chapter shall be taken to prohibit a utility from establishing sliding scale upward rates, beginning at a fixed price per unit for a small consumption and then increasing the price per unit as the consumption is increased.

(f) Whenever there shall be filed with the commission by any utility any schedule stating a new rate or charge, or any change in any form of contract or agreement or any rule or regulation relating to any rate, charge or service, or in any general privilege or facility, the commission may, at any time within sixty days from the date when such schedule would or has become effective, either upon complaint or upon its own initiative, and, if it so orders, without answer or other formal pleading by the utility, but upon reasonable notice, hold a hearing concerning the propriety of a change proposed by the filing. If such change is a major change, the commission shall hold such a hearing. Pending such hearing and decision thereon, the commission, upon filing with such schedule and delivering to the utility, a statement in writing of its reasons

therefor, may suspend the operation of such schedule, but not for a longer period than one hundred and twenty days beyond the time when it would otherwise go into effect. After full hearing, whether completed before or after the schedule goes into effect, the commission may make such order in reference thereto as would be proper in a proceeding begun after the rate, charge, form of contract or agreement, rule, regulation, service, general privilege or facility had become effective. If any such hearing cannot be concluded within the period of suspension as above stated, the commission may extend the suspension for a further period, not exceeding six months.

(g) The commission shall review all filings to determine if they are in compliance with section seventy-two-a of this article. The commission shall have the power to hold public hearings concerning the propriety of any increased rate or charge for fuel costs. At any hearing involving such an increase, the burden of proof as to the correctness and reasonableness of the charge shall be upon the utility.

(h) The commission may, as authorized by section seventy-two of this article, establish temporary rates or charges for any period of suspension under this section.

(i) At any hearing involving a rate, the burden of proof to show that the change or proposed change if proposed by the utility, or that the existing rate, if it is proposed to reduce the rate, is just and reasonable shall be upon the utility; and the commission may give to the hearing and decision of such questions preference over all other questions pending before it.

(j) The schedule, rates, charges, form of contract or agreement, rule, regulation, service, general privilege or facility in force when the new schedule, rate, charge, form of contract, rule, regulation, service, general privilege or facility was filed shall continue in force during the period of the suspension unless the commission shall establish a temporary

rate or charge as authorized by section seventy-two of this article.

(k) In any case in which the commission determines that the whole or any part of any increased rate or charge imposed by a utility pursuant to any automatic adjustment, including but not limited to any fuel adjustment, was not just and reasonable, because of a lack of reasonable care on the part of the utility in providing gas or electric service, the commission may order the utility to refund, with interest, any moneys collected by the utility pursuant to such whole or part of such increased rate or charge. In determining whether a utility exercised reasonable care in providing gas or electric service, the commission shall take into account the public health and safety consequences, and the economic consequences to ratepayers, of the utility's actions.

12-a. Have power to fix and alter the format and informational requirements of bills utilized by public and private gas corporations, electric corporations and gas and electric corporations in levying charges for service, to assure simplicity and clarity and to require indication of any adjustment charges, including but not limited to fuel adjustments, in monetary amounts. The commission shall further ensure periodic explanation of applicable rates and rate schedules for the purpose of assisting customers in making the most efficient use of energy.

12-b.(a) In consultation with the commissioner of the department of commerce have power 1. to designate as economic incentive areas specific areas in which reduced economic activity, unemployment and underutilization of utility facilities justifies the approval of reduced incentive rates for utility services, and to promulgate criteria for identifying such areas and customers eligible for such rates. Upon application of a utility corporation the commission shall authorize special economic incentive rates in such areas to such customers and for such periods of time as the

commission finds will best effectuate the purposes of this subdivision. The commission may also provide for the gradual elimination of the rate reduction authorized, and for the elimination of such reduction, if any conditions imposed by the commission are not met. 2. to designate or form classes of customers as appropriate for special rates or tariffs, in order to prevent loss of such customers, or to attract new customers where necessary to maintain economic use of utility facilities.

Any such special rate or tariff shall be so designed as to recover the incremental cost of providing service to such customers and to contribute to the common costs which otherwise would be borne by other customers.

(b) The commission may also authorize utility corporations to contract with existing or prospective industrial and commercial customers to wheel or deliver electricity or gas purchased directly by such customers, provided that the commission finds that such arrangements are in the overall best interest of the rate payers of the corporation, and that the rates and fees for the services provided adequately compensate the corporation for the use of its facilities.

12-c. Notwithstanding any other provision of law, upon application of a gas or electric corporation, the commission shall authorize such corporation to charge a special empire zone rate equal to the incremental cost of providing service to customers certified as eligible for such rate pursuant to article eighteen-B of the general municipal law.

13. In case any electric corporation or gas corporation is engaged in carrying on any business other than owning, operating or managing a gas plant or an electric plant, which other business is not otherwise subject to the jurisdiction of the commission, and is so conducted that its operations are to be substantially kept separate and apart from the owning, operating, managing or controlling of such gas plant or elec-

tric plant, said corporation in respect of such other business shall not be subject to any of the provisions of this chapter and shall not be required to procure the assent or authorization of the commission to any act in such other business or to make any report in respect thereof. But this subdivision shall not restrict or limit the powers of the commission in respect to the owning, operating, managing or controlling by such corporation of such gas plant or electric plant, and said powers shall include also the right to inquire as to, and prescribe the apportionment of, capitalization, earnings, debts and expenses fairly and justly to be awarded to or borne by the ownership, operation, management or control of such gas plant or electric plant as distinguished from such other business. In any such case if the owning, operating, managing or controlling of such gas plant or electric plant by any such corporation is wholly subsidiary and incidental to the other business carried on by it and is inconsiderable in amount and not general in its character, the commission may by general rules exempt such corporation from making full reports and from the keeping of accounts as to such subsidiary and incidental business. Where the permission granted such corporation pursuant to section sixty-eight is to supply gas only to less than twenty customers specified by the commission, the commission may, if the public interest permits, exempt such corporation from compliance with all or any of the provisions of this article except those affecting matters of public safety and the provisions of sections sixty-five, sixty-eight and seventy-four.

14. The commission shall have power to require each gas corporation and electric corporation to establish classifications of service based upon the quantity used, the time when used, the purpose for which used, the duration of use and upon any other reasonable consideration, and to establish in connection therewith just and reasonable graduated rates and charges; and it shall have power, either upon complaint or upon its own motion, to require such changes in such

classifications, rates and charges as it shall determine to be just and reasonable. Neither the scheduled rates nor the minimum charge for residential customers shall, after July first, nineteen hundred thirty-seven, be based in any manner on the number of outlets, number of rooms, cubic or square foot area or other such standards.

14-a. [Repealed]

15. Receive, and any gas corporation may at any time submit to the commission for its approval, one or more contracts proposed to be made by it for the purchase from the producer of by-product gas, to be used in its service to its consumers, in which said proposed contract the price of gas shall be based on the then market price of coal, and to vary therewith whenever the market price of coal shall vary to the extent of ten per centum for a period of not less than thirty days, and which said contract shall state the efficiency of said gas, and upon the approval of said contract by the commission, or said contract as the same may be amended, altered or changed, and upon the application of said gas corporation, the commission shall make an order fixing the rate or rates to be charged to consumers for the service of such gas, which said rate shall thereafter remain unchanged during the term of said contract in so far as said rate shall be based on the cost of gas to said corporation, except as such cost shall vary with the variations in the price of coal as in said contract provided. The commission shall have like powers and duties with reference to existing contracts made prior to January first, nineteen hundred and twenty-two, by a gas corporation for a supply of by-product gas where the price of gas varies as the price of coal varies. By-product, as used in this section, is defined to mean one of the several products obtained by treatment of coal by some process other than the customary distillation in retorts.

16. The commission shall have power after a hearing on its own motion, upon complaint or upon the application of a

gas corporation or electric corporation to prescribe rates and charges for gas, electricity or other service rendered or to be rendered, embodying the automatic adjustment of such rates and charges, over a fixed period not exceeding four years, based on the relation between the net income from such rates and charges available for return and the fair value of the property of the corporation used and useful in said service; but nothing in this subdivision shall operate to prevent the commission after the expiration of such fixed period from fixing proper, just and reasonable rates and charges to be made for gas, electricity or service as authorized in this article.

17. Notwithstanding the provisions of this article, any gas corporation which transports natural gas through the state of New York but which does not deliver, sell or furnish any such gas to any person or corporation within the state of New York, shall be subject to regulation by the commission only insofar as the construction and operation of such facilities shall affect matters of public safety.

18. [Repealed]

19. The commission shall have power to provide for management and operations audits of gas corporations and electric corporations. Such audits shall be performed at least once every five years for combination gas and electric companies, as well as for straight gas corporations having annual gross revenues in excess of two hundred million dollars. The audit shall include, but not be limited to, an investigation of the company's construction program planning in relation to the needs of its customers for reliable service and an evaluation of the efficiency of the company's operations. The commission shall have discretion to have such audits performed by its staff, or by independent auditors.

In every case in which the commission chooses to have the audit provided for in this subdivision performed by indepen-

dent auditors, it shall have authority to select the auditors, and to require the company being audited to enter into a contract with the auditors providing for their payment by the company. Such contract shall provide further that the auditors shall work for and under the direction of the commission according to such terms as the commission may determine are necessary and reasonable.

The commission shall have authority to direct the company to implement any recommendations resulting from such audits that it finds to be necessary and reasonable.

Upon the application of a gas or electric corporation for a major change in rates as defined in subdivision twelve of this section, the commission shall review that corporation's compliance with the directions and recommendations made previously by the commission, as a result of the most recently completed management and operations audit. The commission shall incorporate the findings of such review in its opinion or order.

20. Notwithstanding any general or special law, rule or regulation, the commission shall have the power to provide for the refund of any revenues received by any gas or electric corporation which cause the corporation to have revenues in the aggregate in excess of its authorized rate of return for a period of twelve months. The commission may initiate a proceeding with respect to such a refund after the conclusion of any such twelve month period.

21. The commission shall require every electric corporation to submit storm plans to the commission for review and approval at such times and in such detail and form as the commission shall require, provided, however, that the same shall be filed at least annually.

22. The commission shall permit the recovery through rates established pursuant to this section of all payments made by electric corporations pursuant to section twenty-nine-c of the executive law.

23. Require every gas corporation or electric corporation having equipment containing five hundred parts per million or greater of polychlorinated biphenyls (PCBs), including but not limited to, capacitors and transformers, to submit a report to the commission. The report shall contain (1) a list of such equipment that is in service, each unit's location, size and service age, (2) a list of such equipment that is retired from service after the effective date of this subdivision, the date each unit was retired from service, and the location of the facility where the unit and/or PCBs are processed or stored, (3) the date for shipment of PCBs within or out of New York state, and (4) a description of the New York state portion of the shipping route. The commission shall require the report to be updated and distributed semiannually. In addition, such corporation shall submit to each county and city located in the service territory of the corporation a report containing the information listed above for such equipment and PCBs located in or transported through the county or city receiving the report.

For the purposes of this subdivision, capacitors, transformers, and equipment designed to use the PCB-free mineral oil dielectric fluids shall be presumed to contain concentrations below five hundred parts per million of PCBs, unless the unit has been serviced with fluid which contains five hundred parts per million or greater of PCBs, or there is any other reason to believe that the unit contains or was ever mixed with fluid with a concentration level of five hundred parts per million or greater or unless testing has specifically shown otherwise.

24.(a) If a nuclear power plant which is not commercially used and useful in the actual generation of electricity on the effective date of this subdivision and which is owned by a single utility on or after the effective date of this subdivision fails to commence or continue commercial operation after the effective date of this subdivision, the commission shall

thereafter remove and exclude from the utility corporation's revenue requirement all amounts, costs, charges, adjustments, or extraordinary cost of capital allowances theretofore made, granted or provided which are attributable, directly or indirectly, to such nuclear power plant or to such plant's failure to commence commercial operation.

(b) The commission shall not thereafter, unless and until such plant commences or recommences commercial operation, include in such utility's revenue requirement any amounts, costs, charges, adjustments or extraordinary cost of capital allowances attributable, directly or indirectly, to such plant or to such plant's failure to commence commerical operation.

(c) Nothing in this subdivision shall be deemed to require a refund of the charges paid by or billed to a customer of such utility prior to a failure to commence or continue commercial operation of such plant.

(d) For the purposes of this subdivision, the failure to commence or continue commercial operation shall mean the abandonment of such plant after the effective date of this subdivision; the denial, including any denial pursuant to or as a result of any administrative or judicial review, of a commercial operating license or other regulatory approval necessary for the plant to become commercially used and useful in the actual generation of electricity; the failure of the plant to become commercially used and useful in the actual generation of electricity within forty-two months of the issuance of the low power testing license for such plant; or the occurrence of any event or the existence of any circumstances (other than customary inspection and maintenance and related repairs or refueling requirements) after the plant becomes commercially used and useful in the actual generation of electricity which renders the plant not commercially used and useful in the actual generation of electricity.

25. Notwithstanding any other provision of law to the contrary, whenever a city having a population of one million or more provides for a deduction from gross receipts of a gas corporation or electric corporation, pursuant to a local law authorized by the provisions of subdivision (k) of section twelve hundred one of the tax law, the rate or charge imposed by any such corporation within such city upon non-residential users of electricity or gas eligible to receive a rebate in accordance with a local law or laws adopted pursuant to article two-G of the general city law shall be set by the commission so as to reflect fully the decrease in tax liability attributable to such deduction.

26. Notwithstanding any other provision of law to the contrary, whenever the gas facility costs of a gas corporation are paid or reimbursed by the city of New York as provided in the gas facility cost allocation act, the rates and charges of such gas corporation within such city shall be set by the commission so as to reflect fully the amount of such payments and reimbursements made by such city. The amount of such payments and reimbursements shall not be reflected directly or indirectly in any rate or charge imposed by such corporation outside such city.

27.(a) Each electric corporation with annual gross revenues in excess of two hundred million dollars shall offer the option of paying charges on the basis of time of use rates for service to its residential customers and to posts and halls owned by a not-for-profit corporation that is a veterans' organization. Such electric corporation shall periodically send a notice explaining the rates and informing such customers and organizations that the rates are available.

(b) Any electric corporation which offers its customers time of use rates shall notify those customers who elect or receive such rate regarding the following:

(1) the hours for which such rates are available for both standard and daylight savings time;

(2) the procedure such customers shall follow in order to have their meter clocks reset following an interruption of service if such resetting is necessary to restore the effective hours of the time of use rates; and

(3) when the utility has knowledge of an outage, a statement within sixty days of such outage that the time of use rates may not be applied at the previously stated times until the meter clock is reset, if such resetting is necessary.

28. No revenues foregone by an electric corporation, as a result of subjecting certain veterans' organizations with rates or charges applicable to domestic consumers pursuant to section seventy-six of this article, shall be recovered from the customers of such corporation.